No. 270.

25887

Brf. of Kimball for Def.

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BRIEF FOR DEFENDANT IN ERROR.

Filed Dec. 5, 1900.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

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THE COMMERCIAL NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

ALMA D. CHAMBERS, AS TREASURER OF WEBER COUNTY, UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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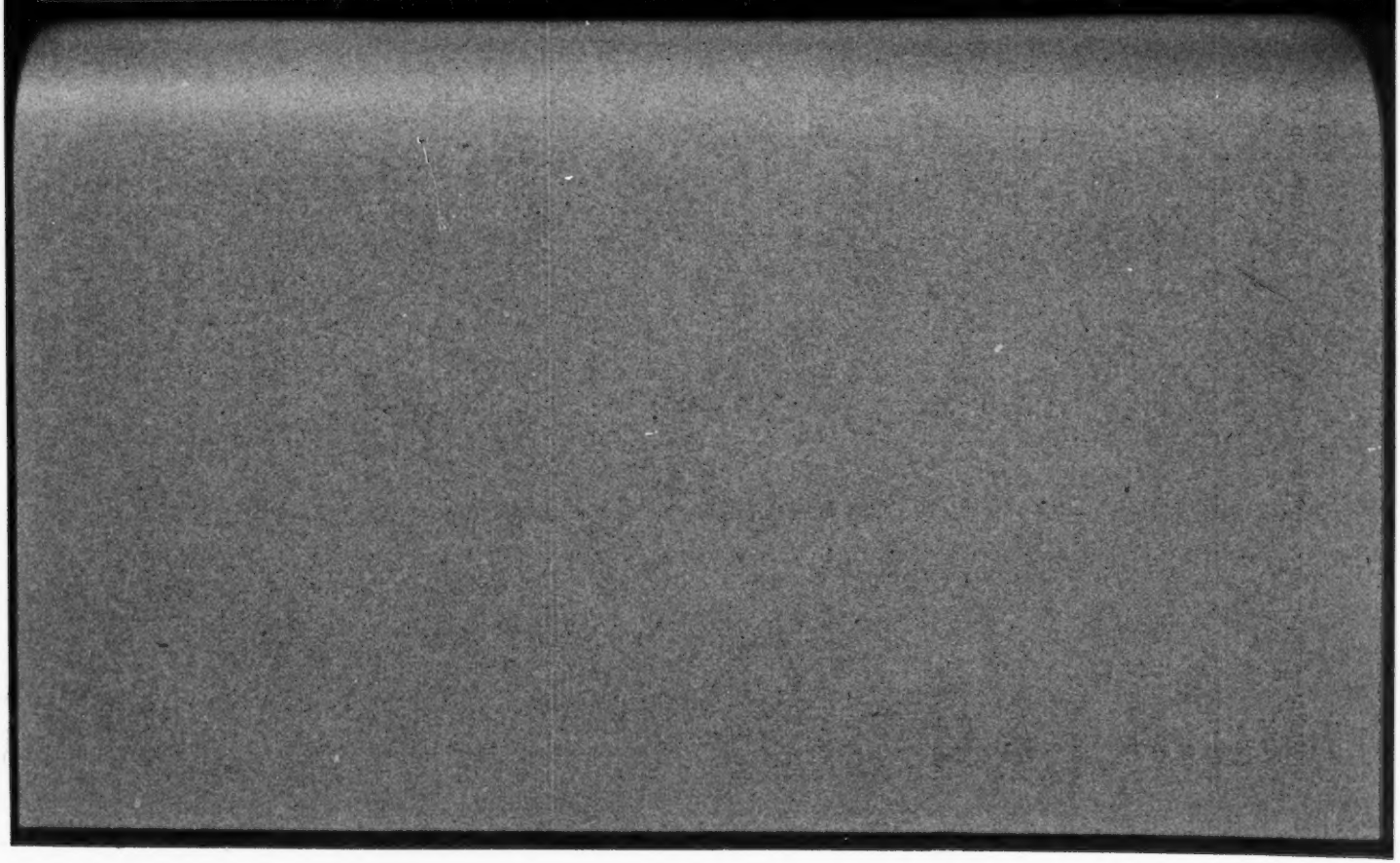

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DEFENDANT IN ERROR.

Brief for Defendant in Error.

In this action the plaintiff in error obtained a judgment in the District Court of the Second Judicial District of the State of Utah in behalf of its stockholders adjudging that the taxes levied by the Assessor of Weber County, on its shares of stock, for the year 1898 in excess of $612.99 was invalid and wholly void, and perpetually enjoining the defendant in error from collecting such excess. (Record, page 14).

This judgment was based upon the findings of fact made by said Court, and found in the Record from pages 9 to 14, both inclusive, which findings of fact must be taken as true on this hearing.

On appeal to the Supreme Court of Utah, that Court on April 10th, 1900, reversed said judgment and directed the said district court to set aside its judgment, and enter judgment for defendant in error for costs, (Record, pages 18 and 28).

The plaintiff in error claims that there is error in the judgment of the Supreme Court of Utah in this: that that Court held that neither it nor its stockholders were entitled to have deducted from the valuation of its shares, real estate situated in the states of California and Idaho, valued for taxing purposes at $19,500 and held that its stockholders Conant and Harkness were not entitled to have deducted from the valuation of their shares, the bona fide debts owing from them to it.

The assessor of Weber County, on the advice of counsel, refused to make these deductions at the time of leveying the tax on the shares of the bank, (Finding 8, Record, page 10) and his refusal to allow deductions to Conant and Harkness was put upon the ground that they, being non-residents, were not entitled to such deductions, (Finding 9, Record, page 11) and at the same time allowed such deductions to resident stockholders from the value of their shares. (Finding 6, Record, page 10).

ARGUMENT.

I.

The claim of plaintiff in error, by its counsel's brief, is that these deductions are provided for and allowed by sections 2 and 3 of Article 13 of the Constitution of Utah, and sections 2508 and 2509 of the Revised Statutes of Utah, and that section 2518 of said Revised Statutes designates the debts which can be deducted, and that the assessor in refusing to make these deductions was acting in violation of the statute law of Utah.

If this claim is well founded, then there is no federal question raised by the record, and this Court has no jurisdiction of this action.

The law itself makes no discrimination against the bank or its stockholders in favor of other moneyed capital, and certainly the record does not show that either the taxing officers, or the Supreme Court of Utah have made any discrimination against the bank or its stockholders in favor of other moneyed capital.

The utmost that can be claimed from the record is that the taxing officers discriminated against the non-resident stockholders, Conant and Harkness, and in favor of the resident stockholders of this bank, by allowing deductions of debts from the value of their shares and refusing such deductions to Conant and Harkness, and violated the express provision of the State law in refusing to deduct the value of the foreign real estate.

How can this action of the taxing officers be in conflict with or contrary to the provisions of Section 5219 of the Revised Statutes of the United States? It cannot.

The utmost that can be claimed for it is, that the officer by allowing the deductions to the resident stockholders and refusing it to the non-resident ones gave the resident ones an immunity or privilege, which he denied to the non-resident ones and is therefore obnoxious to the provisions of the first clause ot Section 12 of the Constitution of the United States, and thus raises a federal question.

But such claim is not tenable. Before this Court can take jurisdiction it must appear that the law of Utah gives the immunity or privilege. The arbitrary action of the officer is not sufficient. The section of the Constitution of Utah, and of the Revised Statutes applicable to this subject are set out in the brief of counsel for the bank, and they provide for a uniform rate of taxation and entitle all taxpayers, whether resident or non-residents, to the same deductions.

Indeed, the counsel for the bank admits and contends that such is the law.

Besides the Supreme Court of Utah in its opinion in this cause, after quoting section 2508 of the Revised Statutes, construed said section as entitling non resident stockholders to all the deductions allowed to resident ones in the following language:

> "Under this provision every stockholder of a bank, whether a resident or non-resident, is entitled to, and must be allowed all the deductions and exemptions in the assessment of their shares as are allowed in the taxation of other personal property owned by a resident citizen." (See Record, bottom of page 21).

> "It appears that individual debts owed by resident shareholders were deducted from the value of their shares, but such deductions were refused non-residents by the assessing officers. The Court however, allowed the deductions also to be made as to non-residents. Certainly if shareholders who are residing in the state are entitled to deduct their debts from the value of their shares those who are residing in a nother state are likewise entitled. The law permits no discrimination between the two classes of shareholders in national banks, and the distinction attempted to be made by the assessing officers would be a clear and unjust discrimination in favor of resident owners of stock, and it would be difficult to assign any good reason therefor, for non-resident, the same as the resident stockholder, may have debts which he owes in this state, and the capital of both alike is invested in the bank. No such discrimination is tolerated by the laws of this state or the United States. Aside from the fact, however, that no such unfriendly discrimination can be permitted, by what authority can any such deduction be made, whether the stock be held by a resident or non-resident? In vain have we searched the Constitution and statutory provisions of this state relating to the subject of taxation for the existance of such a power, and none has been pointed out by counsel on either side." (Record page 24).

Here then is a direct holding that neither class of stockholders is

by the Constitution and laws of the State entitled to deduct debts from the value of their stock. By this construction this Court is bound.

People of the State of N. Y. vs. Weaver, 10 Otto 539.

First National Bank of Garnett vs. Ayers, 160 U. S. 660.

There are many other decisions of this Court to the same effect, but these only are cited because they are on the subject of taxation

Counsel for plaintiff in error in his brief says:

"The case involves simply the carrying out the statute law, (meaning the statute of Utah) of deductions enacted in conformance with Section 5219 Revised Statutes of the U. S. and the decisions of the Supreme Court of the United States thereon."

Thus admitting that the Statutes of Utah, relative to taxation do not conflict with the Statute of the United States or the decisions of this Court upon the subject of taxation of National Bank shares by the states. By this admission, he takes out of the case all questions of a federal nature, so far as they can arise under Section 5219, Revised Statutes of the United States.

For the refusing of deductions of debts to non-resident stockholders and allowing them to resident ones is not taxing the bank shares at a greater rate than other "moneyed capital in the hands of individual citizens," but is taxing the capital of non-residents at a greater rate than is assessed on the capital of residents invested in the same concern.

And the refusal of the Court to allow the deduction of the value of the foreign real estate, raises no federal question on the record in this case, because it no where appears that such deductions were allowed to any other person or corporation. But as to whether the laws of Utah permitted or allowed the deductions claimed by the plaintiff in error, after all, depends upon the construction of the Utah Constitution and taxing laws, notwithstanding the fact that counsel claims that the construction of these laws is not involved in the cause.

And in discussing this question, we cite in addition to the Revenue Statutes of Utah set out in plaintiffs brief the following, towit:

"Section 2505. Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them towit:

"1. The term 'property' includes moneys, credits, bonds, stocks; franchises, and all other matters and things, real, personal, and mixed capable of private ownership. * * *

"6. The term 'credit' means those solvent debts, secured or unsecured, owing to a person.

"7. The term 'debts' means those secured or unsecured liabilities owing by a person.

"8. The term 'person' as used in this title shall be construed to include partnerships, corporations, and associations of persons.".

It will be observed that in the assessment of the shares of stock in banks, wether national or otherwise each stockholder must be allowed all deductions and exemptions allowed by law in assessing the value of other taxable property owned by individuals.

Revised Statutes of Utah, Sec. 2508.

This is construed and interpreted by counsel for the bank to mean that if any deductions are allowed to individuals from the valuation of any of their personal property then the stockholders of the bank are entitled to such deductions from the value of their shares.

But it will be observed that the only personal property from which individual citizens can deduct their debts is the sum total of their credits, viz; "solvent debts secured or unsecured." Revised Statutes of Utah, Section 2518.

It is too plain for argument that the only property from which debts can be deducted is "credits" and the counsel for the bank well says: "that when the Statute is plain it is the duty of the Courts to enforce it according to its obvious terms."

While the term "property" includes "stocks," "credits" etc., the property is classified into moneys, credits, bonds, stocks, real estate etc.

Subdivision 1, Section 2505, Revised Statutes of Utah.

And while "personal" property, includes all these classes except real estate, it is plainly apparent that the Legislature intended to limit the deduction of debts to credits as defined by it, and meant no more than this when it said in Section 2508 that "stockholders must be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual

citizens of the state. And such was the construction of the statute by the Supreme Court of Utah in this case. Record, page 24. And by this construction this Court is bound.

The People vs. Weaver, supra.

First National Bank of Geneva vs. Ayers, supra.

And that this was the intention of the legislature more clearly appears because its constitutional power only extended to the allowance of debts from credits.

Sec. 3 Article 13, Constitution of Utah.

The Statutes of Utah relative to taxation of bank shares and the construction put thereon by the Supreme Court of Utah come within the rule announced by this Court in several cases.

Mercantile National Bank of the City of New York vs. Mayor, Aldermen and Commonalty of the City of New York and George W. McLean, Receiver of taxes 121 U. S. 138.

First National Bank of Garnett Kansas vs. R. H. Ayers et al 160 U. S. 660.

First National Bank of Wellington vs. H. B. Chapman, 173 U. S. 205.

National Bank of Commerce vs. City of Seattle 166 U. S. 721.

First National Bank of Aberdeen, vs. County of Chehalis, 166 U. S. 440.

II.

Did the Supreme Court of Utah err in holding that the value of the California and Idaho real estate could not be deducted from the value of the banks shares?

We contend that it did not: The Constitution of Utah provides, Article 13, Section 2:

"All property in the state, not exempt under the laws of the United States or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The word property, as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership; but this shall not be so construed as to

authorize the taxation of the stocks of any company or corporation, when the property of such company or corporation represented by such stocks, has been taxed. * * "

In pursuance of this constitutional provision the legislature provided in the following sections for assessing bank stock and real estate.

Section 2506 of the Revised Statutes 1898, provides: "All taxable property must be assessed at its full cash value. Land and improvements thereon must be separately assessed."

Section 2507, "The stockholders in every bank or banking association organized under the authority of this state or of the United States, must be assessed and taxed on the value of their shares of stock therein, in the county, town, city, or other district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. To aid the assessor in determining the value of such shares of stock, the cashier or other accounting officer of every such bank must furnish a verified statement to the assessor showing the amount and number of shares of the capital stock of each bank, the amount of its surplus or reserve fund or undivided profits, the amount of investments in real estate, which real estate must be assessed to said bank and taxed as other real estate, and the names and places of residence of its stockholders, together with the number of shares held by each."

Section 2509. "In making such assessment there must also be deducted from the value of such shares, such sum as in the same proportion to such value as the assessed value of the real estate of such bank or banking association in which such shares are held, bears to the whole amount of the capital stock, surplus, reserve, and undivided profits of such bank or banking association."

It will be seen from the foregoing provisions that the real estate is assessed to the bank and taxed as other real estate, and to avoid double taxation, the value of the real estate is deducted from the value of the bank stock. That was done in this case, so far as the real estate situate in the State of Utah is concerned, but the plaintiff claims that it has $19,500 worth of real estate situate outside the State of Utah, and claims that that should be deducted. All the property of the bank, wherever situate enters into and constitutes a part of the market value of the stock. The stock is merely the

representative of value of all the property of the bank, including the franchise. Destroy any part of the property of the bank, and the stock depreciates to that extent. Add to the value of the property of the bank and you add to the value of the bank stock. "The value of these shares is made up by summing up all real and personal property, moneys, credits, stock in other companies, and effects of every character and description, and deducting therefrom lands which are specifically taxed, and all debts, obligations, and liabitities, no matter how secured, or of what kind. The net value of a share is the only amount that can be realized from the property of the company after its obligations are paid. It is true, in making the assessment, neither the assessor nor the bank, nor the stockholder, is required to go through the process of determining the value of the stock in this manner, but it is fixed at its true value, which can, of course, only be determined from the amount of its assets and liabilities. It is apparent that the holders of stock in banks and other corporations have a material advantage over private individuals, in that they are, in effect allowed to deduct from the value of all their assets, real property alone excepted, all their indebtedness of every kind and character. In this respect, money invested through the medium of corporations has a very great advantage over that invested by individuals in personal property."

Dutton vs. Citizens National Bank, 36 Pac., 721.

The constitution and the statutes provide that all property shall be taxed at its full cash value. Yet if the real estate situate outside the state of Utah is deducted from the value of the stock, to that extent it is not taxed at its full cash value—and although the statute as well as the act of congress, provides that the stock shall be taxed where the bank is situate and not elsewhere, yet, according to plaintiff's contention, if all the property of the bank were real estate situate outside the State of Utah, the stock would pay no tax where the bank is situate and still it might be worth one hundred cents on the dollar. Such a construction would be unconstitntional as well as in conflict with section 5219 of the Revised Statutes of the United States which provides that the shares of stock may be taxed by the state in the city or town where the bank is located and not elsewhere. The statute authorizing a deduction of real estate, simply refers to the real estate of the bank situate within the state and not elsewhere, otherwise the statute would be unconstitutional.

American Coal Co. vs. County Commissioners 59 Md. 185.

Dwight vs. Mayor &c. 12 Allen 316.

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And where two constructions can be given to a statute, one constitutional and the other unconstitutional, the court will adopt that construction which sustains the statute. The fact that the real estate may have paid a tax for the same year, in some other state—although that is not shown in this case—will not exempt the property from taxation in this state.

Rhoades vs. Kelly, 51 Pac., 593 and cases there cited.

See Judge vs. Spencer 15 Utah 242.

Nevada Bank vs. Sedgwick 104 U. S. 111.

But, if in the opinion of this Court the lower court did err, in holding that the value of the California and Idaho real estate was not deducted from the value of the shares, that error would not give this Court jurisdiction. For in so holding it was simply construing the constitution and statutes of its own State, and not deciding against a right claimed under the Constitution or laws of the United States.

We therefore respectfully submit that the writ of error should be dismissed or that the judgment of the Supreme Court of Utah be affirmed.

GEORGE HALVERSON,
Attorney for Defendant in Error.

JAMES N. KIMBALL,
Of Counsel for Defendant in Error.